

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FINANCIAL FEDERAL CREDIT, INC.

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Plaintiffs,

2008

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v.

**ELITE WASTE & RECYCLE, LLC,
DOUGLAS SMITH, MICHAEL
MARANTE, AND MEGAN DREHER**

Defendants.

§ CIVIL ACTION NO. 4:06-cv-04049

MEMORANDUM AND ORDER

Plaintiffs filed a complaint against Defendants with this Court on December 22, 2006.

(Docket No. 1.) The Court granted Plaintiff's request for Default Judgment as to Defendants Elite Waste & Recycle, Douglas Smith, and Michael Marante on October 1, 2007. (Docket No. 15.) The remaining Defendant, Megan Dreher, has not been served.¹

Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve the summons and complaint on a defendant within 120 days after filing the complaint. FED. R. CIV. P. 4(m). Rule 4(m) states that if service is not made within 120 days, a court “shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.” *Id.* The Court may dismiss the action on its own initiative after notice to the plaintiff. *Id.*

Nearly ten months have passed since Plaintiff filed the complaint in this case. Plaintiff has not asked the Court for additional time to serve Defendant Dreher and has made no attempt

¹ A summons was issued as to Defendant Dreher on December 22, 2006, but was returned unexecuted on May 10, 2007. The summons was re-issued to on May 29, 2007, but has not been executed. Another summons was issued to Defendant Dreher on September 12, 2007, but has not been executed.

to explain to the Court why it has been unable to make service. The Court further notes that Plaintiff did not appear for an initial conference on October 19, 2007 to discuss the matter.

Pursuant to Rule 4(m), the Court hereby notifies Plaintiff that this action will be dismissed without prejudice as to Defendant Dreher if Plaintiff does not serve Defendant Dreher or show good cause for its failure to do so by November 2, 2007.

IT IS SO ORDERED.

SIGNED this 23rd day of October, 2007.


KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT